

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**LARRY FREDERICK and
SHARON FREDERICK,**

Joint Debtors,

**LARRY FREDERICK and
SHARON FREDERICK,**

Movants,

vs.

**M&T BANK, THE UNITED STATES OF
AMERICA FARM SERVICE AGENCY,
CARGILL, INC., SUSQUEHANNA
COMMERCIAL FINANCE, INC.,
GROWMARK FS, LLC, FS FINANCIAL
SERVICES, LLC, WELLS FARGO
VENDOR FINANCIAL SERVICES, LLC,
BLAIR COUNTY TAX CLAIM BUREAU,
PENNSYLVANIA DEPARTMENT OF
REVENUE, AND THE INTERNAL
REVENUE SERVICE,**

Respondents.

**MOTION FOR SALE OF REAL PROPERTY AND PERSONAL PROPERTY
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**

AND NOW come Larry Frederick and Sharon Frederick (the “Debtors”), by and through their Counsel, Robert O Lampl, John P. Lacher, Ryan J. Cooney and Sy O. Lampl and file the following **MOTION FOR SALE OF REAL PROPERTY AND PERSONAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES** (the “Motion”):

JURISDICTION AND VENUE

1. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334 and 28 U.S.C. Section 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This matter is a “core” proceeding in accord with 28 U.S.C. § 157(b)(2).

3. Sections 105 and 363 of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, “Bankruptcy Code”) and Rules 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) serve as the statutory bases for the relief requested in this Motion.

BACKGROUND

4. The Movants, Larry and Sharon Frederick, are the Debtors in this Chapter 11 Case.

5. On January 8, 2021, the Debtors filed a Motion to Approve Stipulation and Consent Order Settling Contested Matters Between the Debtors and M&T Bank and Establishing Asset Sale Process (the “Motion to Approve”) (DOC # 173).

6 The Motion to Approve seeks approval of a Stipulation between the Debtors, M&T Bank (M&T) and the United States of America Farm Service Agency (the “FSA”), which Stipulation provides for a sales process for three pieces of real property owned by the Debtors along with corresponding personal property (See Exhibit A to the Motion to Approve) (the “Stipulation”).

7. While the Stipulation is still pending approval, the Debtors intend to initiate a sales process consistent with the same.

8. The Debtors own, and seek to sell through this Motion, the following parcels of real property along with the improvements and any buildings or structures located thereon:

- A. An approximately 161-acre parcel located at, and commonly known as, 1098 Frederick Road, Martinsburg, Pennsylvania 16662 and identified as Blair County Map Number: 20.00-09..-009.00-000 (“1098 Frederick Road”);
- B. An approximately 66-acre parcel located at, and commonly known as, 1219 Frederick Road, Martinsburg, Pennsylvania 16662 and identified as Blair County Map Number: 20.00-09..-008.00-000 (“1219 Frederick Road”) (collectively with 1098 Frederick Road, the “Frederick Road Properties”); and
- C. An approximately 59.94-acre parcel identified as Blair County Tax Parcel No. 20.000-12-001.00, located at Frederick Road in Martinsburg, Pennsylvania 16662, which is referred to as Cove Lane (“Cove Lane”).

9. The Debtors also own, and seek to sell through this Motion, various pieces of farming equipment and livestock. A list of equipment that the Debtors seek to sell is attached hereto as **EXHIBIT A**. A list of livestock that the Debtors seek to sell is attached hereto as **EXHIBIT B** (the equipment listed on Exhibit A along with the livestock listed on Exhibit B shall collectively be referred to as the “Personal Property”). The Debtors’ herd is subject to change in the normal course. For the avoidance of

doubt, the Debtors seek to sell all livestock they own as of the date of closing on the sale.

10. The Respondents which may hold liens, claims and encumbrances against the assets the Debtors seek to sell are as follows:

- a. M&T Bank;
- b. The United States of America Farm Service Agency;
- c. Cargill, Inc.;
- d. Susquehanna Commercial Finance, Inc.;
- e. Growmark FS, LLC;
- f. FS Financial Services, LLC;
- g. Wells Fargo Vendor Financial Services, LLC;
- h. Blair County Tax Claim Bureau;
- i. The Pennsylvania Department of Revenue, and
- j. The Internal Revenue Service.

The Debtors engage Juniata Realty

11. On January 14, 2021, the Debtors filed an Expedited Application for Approval of Real Estate Broker (Doc #175).

12. On January 20, 2021, this Honorable Court entered an Order approving Juniata Realty as the Debtors' Real Estate Broker.

13. It was contemplated among the Debtors, M&T and Juniata Realty that Juniata Realty be given 45 to 60 days to market the assets that the Debtors seek to sell through this Motion.

14. Accordingly, the Debtors are seeking a Sale Hearing date between March 10, 2021 and March 18, 2021. Consistent with the same, the Debtors will self-schedule this Motion for March 16, 2021.

The Proposal from Eric and Jennifer Frederick

15. The Debtors have received an offer to Purchase the Frederick Road Properties and the Personal Property from Eric and Jennifer Frederick pursuant to the Purchase and Sale Agreement dated January 26, 2021, which is attached hereto as **Exhibit C**.

16. Eric Frederick is the son of the Joint Debtors. Jennifer Frederick is the daughter-in-law of the Joint Debtors.

17. The proposed consideration is \$2,100,000.00 plus the assumption of the Debtors' obligations to Growmark FS, LLC and FS Financial Services, LLC (collectively "Growmark") to the extent of Growmark's allowed secured claim under 11 USC §§ 506 and 510, if any, on the Personal Property¹.

18. M&T has a first position lien on the Frederick Road Properties and a second position lien on the Personal Property while the FSA has a first position lien on the Personal Property. There is no equity in the assets beyond the liens of M&T and the FSA.

19. Per the Stipulation, M&T and the FSA have agreed to accept this amount of consideration for a release of their liens on the assets being sold and provided that they are paid at closing.

¹ Growmark challenges the enforceability of certain Subordination Agreements executed in favor of M&T regarding the Personal Property.

The Proposal from Mark and Megan Frederick

20. The Debtors have received an offer to purchase Cove Lane from Mark and Megan Frederick pursuant to the Purchase and Sale Agreement dated January 26, 2021, which is attached hereto as **Exhibit D**.

21. There is no known relation between the Debtors and Mark and Megan Frederick.

22. The proposed consideration is \$850,000.00.

23. M&T has a first position lien on Cove Lane. Cove Lane is vacant land and there is no Personal Property being sold with Cove Lane. There is no equity in Cove Lane beyond the lien of M&T.

24. Per the Stipulation, M&T has agreed to accept this amount of consideration for a release of its lien on Cove Lane provided that M&T is paid at closing.

The Bid Procedures Motion

25. Simultaneously with the filing of this Motion, the Debtors are filing an Expedited Motion to Approve Bid Procedures (the "Bid Procedures Motion").

26. Per the Bid Procedures Motion, the Debtors, with the support of M&T and the FSA have proposed that competing bids be solicited for the Frederick Road Properties and Personal Property (together as one lot) and for Cove Lane (individually and in bulk with the Frederick Road Properties and Personal Property). They have further proposed that this Honorable Court determine the highest or best bid or bids at the Sale Hearing.

RELIEF REQUESTED

27. Through this Motion, the Debtors seek to sell the Frederick Road Properties, Cove Lane and the Personal Property at the highest price offered by qualified bidders at an auction with the proposal from Eric and Jennifer Frederick serving as the opening bid on the Frederick Road Properties and Personal Property and the proposal from Mark Frederick and Megan Frederick serving as the opening bid on Cove Lane.

28. Further, the Debtors seek to transfer the liens, claims and encumbrances to the proceeds of the sale(s) in accordance with their priority, if and to the extent that they may be determined to be valid liens against the Frederick Road Properties, Cove Lane, or the Personal Property. The Debtors seek to pay M&T and the FSA at closing up to the full amount of their allowed secured claims.

29. The assets are being sold as-is, where-is.

30. The Debtors believe, and therefore aver that the proposed sale is fair and reasonable and acceptance and approval of the same is in the best interest of this Estate.

WHEREFORE, the Debtors respectfully request that this Honorable Court enter the proposed Order approving the sale(s) free and clear of all liens, claims and encumbrances.

Respectfully Submitted,

Date: January 27, 2021

/s/ Robert O Lampl
ROBERT O LAMPL
PA I.D. #19809
JOHN P. LACHER
PA I.D. #62297
RYAN J. COONEY
PA I.D. #319213
SY O. LAMPL
PA I.D. #324741
ALEXANDER L. HOLMQUIST
PA I.D. # 314159
223 Fourth Avenue, 4th Fl.
Pittsburgh, PA 15222
(412) 392-0330 (phone)
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VENDOR FINANCIAL SERVICES, LLC,
BLAIR COUNTY TAX CLAIM BUREAU,
PENNSYLVANIA DEPARTMENT OF
REVENUE, AND THE INTERNAL
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Respondents.

CERTIFICATE OF SERVICE

I, Robert O Lampl, hereby certify, that on the 27th day of January, 2021, a true and correct copy of the foregoing **MOTION FOR SALE OF REAL PROPERTY AND PERSONAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES** was served upon the following (*via First Class US Mail and/or Email as noted below*):

Office of the U.S. Trustee
970 Liberty Center
1001 Liberty Avenue

Pittsburgh, PA 15222
(via First-Class U.S. Mail)
M&T Bank
c/o William E. Kelleher
Dentons Cohen & Grigsby, P.C.
625 Liberty Avenue
Pittsburgh, PA 15222
(via email: Bill.kelleher@dentons.com)

The FSA
c/o Jill Locnikar
Assistant United States Attorney
Joseph F. Weis Jr. United States Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(via email: Jill.Locnikar@usdoj.gov)

FS Financial Services, LLC
c/o Growmark FS, LLC
ATTN Jill Henninger
308 NE Front Street
Milford, DE 19963
(via email: jhenninger@growmarkfs.com)

Growmark FS, LLC
ATTN Jill Henninger
308 NE Front Street
Milford, DE 19963
(via email: jhenninger@growmarkfs.com)

Susquehanna Commercial Finance, Inc.
2 Country View Road, Suite 300
Malvern, PA 19355
(via First-Class U.S. Mail)

Wells Fargo Vendor Financial Services, LLC
ATTN Michelle Schulten
1010 Thomas Edison Blvd. SW
Cedar Rapids, IA 52404
(via email: Michelle.schulten@wellsfargo.com)

Blair County Tax Claim Bureau
423 Allegheny Street, Suite 143
Holidaysburg, PA 16648
(via First-Class U.S. Mail)

Pennsylvania Department of Revenue
Bankruptcy Division
PO Box 280946
Harrisburg, PA 17128
(via First-Class U.S. Mail)

The Internal Revenue Service
c/o Jill Locnikar
Assistant United States Attorney
Joseph F. Weis Jr. United States Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(via email: Jill.Locnikar@usdoj.gov)

Cargill, Inc.
P.O. Box 6034
Fargo, ND 58108
(via First-Class U.S. Mail)

Eric and Jennifer Frederick
1219 Frederick Road
Martinsburg, PA 16662
(via First-Class U.S. Mail)

Date: January 27, 2021

/s/ Robert O Lampl
ROBERT O LAMPL
PA I.D. #19809
JOHN P. LACHER
PA I.D. #62297
RYAN J. COONEY
PA I.D. #319213
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